

Town of Amherst
Zoning Board of Appeals

2015 JAN 28 PM 2: 27

SPECIAL PERMIT AMHERST TOWN CLERK

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2015-00008, to modify conditions of ZBA FY2014-00015 to allow changes to the approved building and site plans, under Section 10.33 of the Zoning Bylaw, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District), subject to the following conditions:

Prior to a Certificate of Occupancy:

The following exterior changes shall be completed, subject to inspection and approval by the Building Commissioner, prior to the issuance of a Certificate of Occupancy:

- Completion of all interior work required under the Building Code.
- Re-alignment and reconstruction of the gravel parking area and driveway, in accordance with the design criteria of Section 7.101 (prepared subgrade with minimum 12 inch compacted gravel base) to be substantially in accordance with the site plan prepared by Kraus Fitch Architect, last revised on November 6, 2014.
- The installation of minimum sized 4 x 4 landscape timbers secured into the ground with white markings on the face and top of timber sufficient to delineate each 9 foot wide parking space. Said timbers shall run 36 feet along the front of the parking area and along each 18 foot edge of the parking area.
- The screening fence, as shown on the approved site plan shall be installed. The fence shall of a style and design substantially in accordance with the approved fence detail/design.
- The walkway to each dwelling unit, as shown on the approved site plan shall be installed. Said walkways are to be constructed of compacted gravel.
- Separation of the driveway from rest of the property.
- The installation of a lattice screen shall be installed as shown on the approved site plan and the approved elevations.
- The retaining wall shall be installed substantially in accordance with the approved site plan and to the specifications shown on the retaining wall detail prepared by Kraus Fitch Architects dated October 16, 2014. The finished material of the wall shall consist of rusticated block and shall contain a cap, substantially in accordance with the materials photograph.
- Repair of the existing foundation wall shall be completed substantially in accordance with the plan prepared by Whetstone Engineer, SK-1 dated August 8, 2014.

Performance Bond:

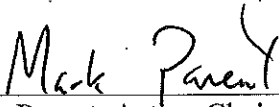
Prior to the issuance of a Certificate of Occupancy, a Performance Bond in the amount for the remaining work shall be approved by the Building Commissioner and be kept on file. The following exterior changes shall be completed by June 30, 2015, or the Town of Amherst will act on the approved performance bond to complete the following:

- Landscape plantings (size, type, and location) shall be as shown on the approved site plan. The minimum size of landscape materials at planting shall be a minimum of 1.5 caliper for trees and five gallons for shrubs.

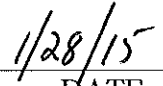
- Completion of the exterior siding in accordance with the approved elevations prepared by Kraus Fitch Architects. The approved elevations require the removal of existing blue siding from south side (street side) of the newly constructed "connector" addition and replaced with new cedar shake shingles.
- Removal of gravel areas adjacent to the renovated structure, as shown on the approved site plan, to be loamed and seeded with grass. The placement of loam shall be of a sufficient depth to support the installation of grass seed.
- Failure to complete the listed work prior to June 30, 2015, shall constitute a violation of this Special Permit and the owner shall be subject to fines under Section 11.45 of the Zoning Bylaw.

General conditions

- Within two years from the filing of this decision with the Town Clerk, the owner shall either:
 - Install the proposed second door for owner storage, in accordance with the approved "Left Side Elevation", and complete all interior work necessary for the separation of the owner storage and tenant space pursuant to the Building Code, or
 - In the event that the door is not installed, cover, repair, and improve the foundation wall to a smooth concrete finished surface.
- All landscaping features shall be continuously maintained and replaced if they die or are destroyed as listed in Section 11.31 of the Zoning Bylaw.
- The grading adjacent to the building shall be designed and maintained to ensure positive drainage is provided away from the foundation. Final grading and drainage shall be subject to final inspection and approval by the Building Commissioner.
- All other relevant conditions of ZBA FY2014-00015 and ZBA FY2012-00021 shall remain in effect.


Mark Parent, Acting Chair
Amherst Zoning Board of Appeals




DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Michael Ben-Chaim, 28 Shays Street, Amherst, MA 01002

Date application filed with the Town Clerk: August 11, 2014

Nature of request: For a Special Permit to modify Special Permit ZBA FY2014-00015 and/or ZBA FY2012-00021 to allow changes to the approved building and site plan including demolition of an existing structure and changes to the approved siding materials.

Address: 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)

Legal notice: Published on August 13, 2014 and August 20, 2014 in the Daily Hampshire Gazette and sent to abutters on August 13, 2014

Board members: Mark Parent, Yuri Friman, Pari Riahi

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application form filed with the Town Clerk on August 11, 2014
- Applicant's summary of changes and photos
- Wall repair design, prepared by Whetstone Engineering, dated August 8, 2014
- Hand drawn elevation showing new exterior door
- Hand drawn floor plan showing new exterior door and owner storage
- Image of proposed lattice material
- Hand drawn site plan showing existing retaining wall
- ZBA FY2014-00015 decision and approved plans
- ZBA public meeting minutes from August 7th, 2014

Site visit **August 26, 2014**

Mark Parent, Yuri Friman, Pari Riahi viewed the property and observed the following:

- The semi-completed exterior of the addition. It contained blue vinyl siding along the new connector addition while retaining the wood shingles on the renovated garage portion.
- The unfinished site work, including an unfinished driveway and parking area, crumbling retaining wall, and construction debris throughout the front of the property.
- The existing foundation wall in a state of disrepair and exposed as a result of the removal of the shed structure and unfinished areas of siding on the back of the building.

Public Hearing: August 28, 2014

The applicant, Michael Ben-Chaim was present. He explained that during the course of construction certain aspects of the project had changed. After several internal inspections associated with the Building Permit, Inspection Services determined that certain changes were not in compliance with the plans approved in the previous Special Permit, ZBA FY2014-00015. A stop work order was issued until the changes were reviewed by the Zoning Board of Appeals.

On August 7, 2014, the Zoning Board of Appeals (Eric Beal, Keith Langsdale, and Pari Riahi) determined that certain changes were de minimus and did not require modification of ZBA FY2014-00015. Those changes to the approved plans included:

- Only one window was installed in the front (street) side of the addition which was also reduced in size; the basement windows on the left (west) side elevation are of regular rectangular shape rather than square; and, only one window, sized 33"x54, was installed in the back (north) wall of the addition.
- The shape of the roof was simplified to eliminate unnecessary roof 'valleys'.
- The main entrance door at the basement level was moved inbound and to the left.
- The location of the kitchen was moved from one wall to another.
- The configuration of the bathroom was modified.
- The location of the interior staircase was changed.

During that public meeting, the ZBA determined that other changes to the approved siding material and the removal of an existing shed structure on the street side of the building were significant enough to require modification of the permit and a public hearing. This determination allowed the interior work to continue while an application to formally modify the Special Permit was submitted.

The changes under review by this application include:

Different siding material

The plans approved in 2014 required that the entire new/renovated portion of the two family be grey vinyl siding while the existing structure remained wood clapboard/shingle siding. Mr. Ben-Chaim explained that the front of the renovated structure remained in wood clapboards to save money. Several new clapboards were put in as patches or to fill in areas around where the new door and windows were installed. The remainder of the renovated portion was covered in blue vinyl siding.

The Board discussed the lack of new siding on the front of the renovated garage at length. The Board expressed concern that the change from vinyl to wood on only a portion of the front of the building was a significant departure from the goal of the approved plans, which was to make the new unit and existing house unified. The Board determined that there were too many different types of materials on the street side of the building and that it created a very non-unified and aesthetically unpleasant facade. The Board discussed the possibility of having the front of the addition covered in vinyl or covering the clapboard in vinyl as per the plans.

The Board discussed the change in color of the vinyl siding. It was noted that condition # 7 of the 2014 permit required that the vinyl siding be "substantially similar to the sample approved" which was grey. With the front of the renovated garage in wood clapboard, the front of the new addition in blue vinyl, and the side of the existing house in wood clapboard, the Board determined that the blue created a much more significant contrast to the wood than the grey would have. The Board discussed the possibility of removing the blue siding and replacing it with more of a grey tone or possibly painting the house blue to remove the significant contrast.

Removal of an existing shed structure

An existing shed structure on the front of the building was removed by the contractor. Mr. Ben-Chaim explained that the structure was in poor condition and he decided to remove it. The existing foundation on two sides of the building were exposed by its removal. He proposed to attach white vinyl lattice onto the foundation to cover it up.

The Board discussed the impact of the removal of the shed structure. The Board expressed concern that its removal exposed approximately 6 feet of foundation on two walls which was not previously visible. The condition of the foundation wall supporting the new addition above was questionable. The Board noted that the Building Commissioner had required a structural engineer to inspect the wall. The repair plan submitted by the engineer requires the installation of rebar and additional concrete along with the construction of a two foot retaining wall in front of the wall. The retaining wall is set off of the existing foundation approximately 2 feet to create the required frost protection and creates a planter-like structure. The Board expressed concern with the proposed finish material of the two foot retaining wall as being cinder block. The Board also expressed concern with the applicant's proposal to cover the remaining foundation in white lattice. The Board determined that lattice alone would not be sufficient to mitigate the visual impact created by removing the shed structure. The Board discussed whether additional landscaping would be necessary in this area.

Maintain existing retaining wall

The plans approved in 2014 showed that a crumbling dry-laid cinder block retaining wall in front of the renovated garage and addition was to be removed and the area regarded and covered in gravel. Mr. Ben-Chaim explained that he would like to now keep the retaining wall and not re-grade the area.

The Board discussed the retaining wall. It was determined that the submitted sketch did not provide enough information to evaluate the wall. The Board noted the poor condition of the retaining wall, noting that it was crumbling and did not seem structurally sound. The Board expressed concern with the ability to repair the wall and no information about its height or length were provided. It was noted that at a certain height, a retaining wall can require a handrail. The Board requested additional information be provided by a landscape architect or similar professional regarding the wall. The Board discussed that

Install a new basement egress door

Mr. Ben-Chaim explained that he would like to install a new basement door next to the existing basement door in order to create a separate internal owner storage area; separate from the tenant space in the bedroom.

The Board reviewed the submitted hand drawn elevation and floor plan. The Board expressed concern with the potential for the second door on the same foundation wall to potentially change the appearance of the structure. The Board noted that the original approval in 2012 along with the changes approved in 2014 were for a duplex which requires that the external appearance and footprint be compatible in terms of design with those of single family dwellings in the vicinity.

The following members of the public spoke regarding the application:

- Simon Keochakian, 76 Shays Street, expressed concern with the applicant's pattern of changing things without permission and seeking forgiveness. He noted that the original foundation wall was poorly built and needs to be properly evaluated. He expressed concern that the changes to the structure and the siding have made the project incompatible with the original permit conditions.
- Jim Phanuef, 38 Shays Street, the installation of blue vinyl rather than grey has made the appearance incompatible and highlights the different portions rather than being unified as was originally intended.
- Greg Keochakian, 5 Shays Street, expressed concern with the amount of changes to the project since it was approved. The removal of the shed is an example of how the applicant has disregarded the approval process. The removal of the shed structure and the deviation from the siding requirement has re-opened up the need to address the aesthetic impact of the project. He urged the Board to require the siding be uniform, additionally landscaping be provided, and that the work be completed prior to any occupancy of the unit.

The Board expressed concern with the incomplete information and requested the applicant seek input from an architect. The Board provided a list of additional information including:

- A landscaping plan for in front of the renovated garage and addition.
- Complete elevations of the South, West and North showing the siding, lattice, and new door.
- Changes to the siding to create a more unified structure and design.
- Manufacturers' specifications on the installed siding.
- And a grading plan for the location of the former shed structure.

Mr. Parent MOVED to continue the hearing to September 11, 2014 at 5:30 p.m. Ms. Riahi SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: September 11, 2014

The following new information was submitted:

- Elevations, prepared by Kraus Fitch Architects, dated September 8, 2014
- Site Plan, prepared by Kraus Fitch Architects, dated September 8, 2014

The applicant, Michael Ben-Chaim, described the revised plans:

- The front elevations show the renovated garage portion remaining in existing wood shingles with the addition/connector in blue vinyl. The elevation shows lattice on the foundation areas along with a proposed lattice screen to shield the new door and the proposed planter at the base of the foundation.
- The left side elevation shows the existing retaining wall to remain with a proposed guardrail.

The Board noted that the architect's plans are more detailed, however, the plans depict essentially the same proposal as presented on August 28, 2014, without any significant changes.

The following members of the public spoke regarding the application:

- Simon Keochakian, 76 Shays Street, expressed concern with the applicant's integrity in complying with the Special Permit. He noted that all of these issues were discussed at great length during the initial hearings in 2012 and again when the plans changed in 2014. The changes to the plans and the ZBA approval of them are eroding the project to something that wouldn't have been approved. He urged the Board to maximize the amount of things that can be mitigated in terms of the aesthetics of the project stating that if these things are not resolved now, the neighborhood will be stuck with these issues.
- Jim Phanuef, 38 Shays Street, asked if living space was approved in the basement of the original house.
- Greg Keochakian, 5 Shays Street, expressed concern with the lack of landscaping noting that it would be out of character with the neighborhood. He urged the Board to add back in requirements for landscaping on the street side of the property given the negative aesthetic impact of the shed removal.

The Board discussed and determined the following:

Retaining Wall

- The construction detail for the retaining wall must show how it will be built and what it will look like. The plan should be definitive and should include finish materials for top and sides, location, measurements (length and height of wall).
- Cinder blocks will not be acceptable as finished material
- The existing cinder block wall is not suitable to keep and requires reconstruction.
- A construction detail for the railing, including how it will be installed, secured, color, material and height is required.
- The tilt of the existing retaining wall next to house should be considered as part of this set of revised plans.

Siding

- The applicant must consider options to provide a more uniform façade. The discussion included whether painting the wood siding on house and addition to match blue vinyl make sense; does removing the vinyl on front and replacing with wood shingles make sense; are there any other options to create a more uniform façade?
- The color of the installed vinyl siding was determined to be blue, not gray as required.
- The finish materials for inset entrance door should be identified
- The Board noted that the intent of approving the gray was to not create such a drastic contrast between the wood color of the existing dwelling and the new siding.

Drainage

- The Board, based on input from the Building Commissioner, requires that a drainage plan for the former shed area and retaining wall be provided.
- Any excavation of the parking and/or reconstruction of the retaining wall are related to what happens with drainage where the shed used to be. The drainage plan should be comprehensive for this area.

Landscaping

- Landscaping is important and needs to be considered as a consequence of removing the shed and to soften the visual impact.
- The planter associated with the foundation wall repair is not sufficient by itself.
- The Board noted that the landscaping plan approved in 2012 provided a viable solution that should be considered and re-introduced into this proposal.

Design Review Board

- Based on the design and aesthetic issues related to the changes in the approved plan, the Board requested the applicant appear before the Design Review Board for guidance. The Board noted that the original approval in 2012 was reviewed by the DRB. The Board identified the following scope of review for the DRB:
 - Review of the color and material of the siding and how or if changes can create a more uniform appearance (how to harmonize the front elevation/façade). Does painting the wood siding on house and addition to match blue vinyl make sense? Does removing the vinyl on front and replacing with wood shingles make sense? Are there any other options to create a more uniform façade?
 - Review of the other exterior changes, including but not limited:
 - All changes associated with the removal of the shed
 - Effectiveness of lattice wall and planter
 - Lattice wall to screen new second door
 - New second door
 - Retaining wall and railing
 - Landscaping

Potential Occupancy

The applicant requested that the Board allow him to occupy the unit prior to resolution of the design issues. After discussion and input from the Building Commissioner, the Board noted the possibility for the applicant to present a cost estimate prepared by an architect and a bond for that amount to complete the work related to mitigating the shed removal as a way to allow the applicant to possibly obtain occupancy after the decision but before the improvements are completed. The Board noted that this would require a plan endorsed by the Design Review Board be submitted and approved by the ZBA.

Mr. Parent MOVED to continue the hearing to October 30, 2014 to allow time for the applicant to appear before the DRB and prepare revised plans. Ms. Riahi SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: October 30, 2014

The following new information was submitted:

- DRB memorandum # 2, summary from October 21, 2014 DRB meeting
- DRB memorandum # 3, summary from October 28, 2014 DRB meeting
- Updated Site Plan and Elevations prepared by Kraus-Fitch Architects, last revised October 30, 2014
- Preliminary Cost Estimate (associated with a potential bond) prepared by Kraus-Fitch Architects
- Photograph of proposed retaining wall material
- Site photographs from October 29, 2014
- Fence detail (previously approved)

- Retaining Wall material photograph
- Site photographs, submitted by the Planning Department
- Draft conditions, dated October 30, 2014, for discussion
- Parking Violation, dated October 14, 2014
- De la Cretaz letter, dated October 26, 2014
- Keochakian letter, dated October 29, 2014

The applicant, Michael Ben-Chaim, was accompanied by his architect, Mary Kraus of Kraus Fitch Architects. Mr. Bagg noted the following site changes had occurred at the property since the last hearing on September 11, 2014:

- A large portion of the property was cleared of overgrowth, re-graded and seeded with grass.
- A driveway and parking area were substantially installed. However, the installed parking area did not conform to the previous plan. In addition to the discrepancy between what was approved and what was installed, the applicant is proposing additional changes. Staff physically marked out on the site where changes need to occur in order to come into conformance with the proposed plan. This was illustrated in the submitted photographs.
- The foundation wall repair (under the addition) was started by a contractor. However, the wood forms for the concrete did not withstand the weight of the concrete and were destroyed. The condition of the foundation wall is unfinished.

Ms. Kraus presented a set of updated plans which represent the applicant's desired outcome and separate plans showing the final DRB recommendations. She explained that the owner had been to the Design Review Board three times since the September ZBA hearing:

DRB meeting of September 30, 2014

The applicant represented himself and presented the DRB with the same plans discussed by the ZBA during the September 11, 2014 hearing. The DRB expressed frustration with the ZBA that changes to the approved plans were allowed without their consultation. They noted that many of the approved changes exacerbated the issues that the Board is contending with now. The DRB also expressed frustration with the applicant for largely ignoring the conditions of the Special Permit and approved plans by changing aspects of the project and seeking forgiveness after the fact. At the conclusion of the meeting, the DRB offered the following recommendations:

- Reduce the number of siding materials on the façade.
- Submit a coherent site plan.
- Submit a planting plan, primarily for the area that is visible from the street, to reduce the visual impact of the building.
- Address the problem of the crumbling foundation wall in a way that is more substantial than lattice; propose something that looks like a solution, not a patch; follow the advice of the Building Commissioner with regard to this foundation wall.
- The manufactured block retaining wall with a capstone is acceptable, if it matches the existing retaining wall; however, the retaining wall may be able to be eliminated by grading the slope; look into grading the slope instead of installing the new retaining wall.
- All drawings (Plans and Details) should be prepared by a registered professional architect and/or landscape architect.

DRB meeting of October 21, 2014

The applicant was accompanied by Mary Kraus of Kraus-Fitch Architects. The DRB did not have a quorum and did not make a formal recommendation. The DRB reviewed elevations showing two options for siding. One elevation showed the right-hand structure sheathed in shingles, the connector in blue vinyl siding and the left-hand structure in shingles. This is the existing condition. The alternative elevation showed blue vinyl siding on the left-hand structure to match the connector. The DRB reviewed the updated site plan which showed more landscaping, including some screening for the repaired concrete wall and agreed that it was an improvement over the previous plan.

DRB meeting of October 28, 2014

After considerable discussion, the DRB made the following recommendations:

- Siding and façade treatment – the Design Review Board submits the following options to the ZBA for its consideration:
 - Option #1 – Preferred choice – Install shingles on the connector to match the existing building and the gable end. Shingles would be left to weather and would not be painted or stained.
 - Option #2 – Second choice – Remove vinyl siding from west (northwest) side of the western-most structure and replace with shingles. Stain entire structure, including western-most structure and existing house to match the connector. Leave vinyl siding on the connector.
 - Option #3 – Third choice – Install vinyl siding on the gable end to match the connector.
- Site Plan and Plantings – the Design Review Board submits the following comments to the ZBA for its consideration:
 - Add three small trees (mature height of 15' to 20') as shown on the attached sketch; two trees on either side of the driveway and one tree close to the house; trees to consider would be Flowering Dogwood, Crabapple and Cherry, all of which have a full crown when mature.
 - Keep Black Chokeberry shrubs proposed for edge of driveway, as shown on Site Plan.
 - Replace Arborvitae with evergreen shrubs, like Rhododendron, with a mature height of at least 6 feet. Plant 3 evergreen shrubs like Rhododendron in front of the concrete foundation wall for screening.
- Concrete foundation wall of Connector – the Design Review Board submits the following comments to the ZBA for its consideration:
 - The applicant should consult a structural engineer with regard to the structural integrity of the existing foundation wall as well as how to proceed to repair the wall;
 - A structural engineer should assist in the design of the formwork for the repair of the concrete foundation wall;
 - The applicant should adhere to requirements of the Building Commissioner with regard to the proposed repair of the foundation wall;
 - The final surface of the foundation wall should be as smooth as possible, without undermining the structural integrity of the wall;

- The wall may need to be parged to affect a smooth surface;
- A chamfer at the top of the foundation wall where it meets the siding may help to direct stormwater towards the ground and keep it from seeping into the wall itself.

The following members of the public spoke regarding the application:

- Simon Keochakian, 76 Shays Street, expressed concern that the color of the vinyl siding being blue rather than grey is unresolved. He urged the Board to adopt the DRB recommendation to remove the blue vinyl and replace it with wood shingles, noting that he was not concerned with the new shingles needing to blend over time with the old shingles. He urged the Board to not consider a bond and rather require all work to be completed prior to the issuance of a Certificate of Occupancy.
- Greg Keochakian, 5 Shays Street, stated that when the repair of the foundation failed, someone was at the property with a skid steer or similar machine in the early evening burying the material in the back yard, which he believed to be a violation of the Building Code. He expressed concern about the exterior lights and stated that they are not downcast and are currently casting out toward the street and toward his property.
- Avril de la Cretaz, 31 Shays Street, urged the Board to adopt the DRB recommendation to remove the blue vinyl and replace it with wood shingle. She stated that the additional landscaping on the street-side of the property is essential to mitigating the impact of the new addition.

The Board reached consensus that the applicant should implement option # 1 preferred by the DRB which will require the applicant remove the blue vinyl on the connector and replace it with wood shingles. The Board also adopted the recommendations of the DRB in terms of requiring additional landscaping as shown on the plans and requiring that the existing foundation wall be of a smoothed finish material.

The ZBA heard requests from the applicant about delaying the requirement to implement the site improvements. The applicant emphasized the importance of getting a Certificate of Occupancy and getting into the unit before the work is required to be completed. The Board determined that many of the site improvements would be required to be implemented before the Certificate of Occupancy, including:

- The re-alignment of the parking area to comply with the submitted Site Plan.
- The installation of the screening fence along the north property line.
- The installation of a compacted gravel walkway to each unit.
- Delineation of the parking area from the remainder of the property through the installation of wood timbers.
- Installation of a lattice screen adjacent to the entrance to the basement door.
- Repair of the foundation wall.

The Board discussed the bond and cost estimate. The Board heard from Mr. Morra that the estimate was low, and did not provide cost estimates required in the event the Town would need to carry out the work. The Board identified that the landscaping and siding would be required to be completed prior to July 1, 2015 or the Town would begin completion of the project using the bond. The Board reviewed, discussed, and finalized the preliminary draft list of conditions.

Ms. Riahi MOVED to close the public hearing. Mr. Parent SECONDED the motion and the Board VOTED unanimously to close the public hearing. Mr. Parent MOVED to continue the public meeting to November 6, 2014 at 5:30 p.m. Ms. Riahi SECONDED the motion and the Board VOTED unanimously.

Public Meeting: November 6, 2014

Mary Kraus was present for the beginning of the meeting. The applicant, Michael Ben-Chaim, arrived during the meeting. Ms. Kraus provided an updated Site Plan and revised cost estimate, both revised on November 6, 2014.

The Board discussed the final cost estimate for the bond. Mr. Morra identified that the revised estimate now includes payment of prevailing wage and a general contracting fee in the event that the Town needed to complete the work. Ms. Kraus noted that the applicant has removed the vinyl siding from the addition and intends to install the wood shingles as soon as possible. The Board noted that any items completed before submission of the final bond (and prior to the issuance of the Certificate of Occupancy) can be removed and the amount adjusted accordingly.

The Board noted that the final site plan includes delineation of the parking area, specific sized plantings pursuant to the Town landscaping guidelines, indication of areas to be loamed and seeded, and an opportunity for additional street trees to be planted by the Tree Warden as part of a re-planting program.

Specific Findings:

The Board noted that the findings in this case related to the changes to the approved plan. The original Special Permit (ZBA FY2012-00021) was granted for the overall use of the property as two units. A subsequent Special Permit (ZBA FY2014-00015) was previously granted to reduce the size and appearance of the units. With respect to the subsequent changes to the approved 2014 plans, the Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.382, 10.383 & 10.385 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features. The approved revised site plan provides for additional landscaping around the new second unit and along the street side of the property. The changes to the exterior façade as reviewed and recommended by the Design Review Board are intended to provide a more unified and consistent appearance and to enhance the aesthetics of the building. Screening of headlights from parked vehicles is accomplished by the installation of a new fence. The site plan changes provide for delineated and better organized parking and creates better delineation between the gravel driveway, parking area, and landscaping in front of the dwellings.

10.386 & 10.387 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw; The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The proposal maintains the required number of spaces for the use and the revised site plan provides for a more organize and delineated parking area. The separation/delineation of the driveway and parking are from the pedestrian areas in front of the unit creates a more efficient and safe area for vehicle maneuvering and pedestrian access.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. The approved revised site plan provides additional landscaping to ensure that the property maintains a residential appearance more in keeping with the surrounding neighborhood. The proposal allows for additional plantings to be placed on the street side of the property under the direction of the Tree Warden program.

10.385 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. The Board finds the changes to the site plan, elevations, and landscaping ensure that the completion of the project will be in harmony with the surrounding properties. The extensive involvement of the DRB and approval of the final plans are intended to bring the project back into compliance with the intent of the original permits. Any deviation from these approved plans should be considered significant given the extent of the deviation and the amount of time involved in reaching a suitable alternative.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The approved plans represent a compromise and a balance between the needs of the applicant and the needs of the neighborhood. The approval of the revised plans is intended to ensure that the project is completed and satisfies the basic intent of the original Special Permit.

Zoning Board Decision

Mr. Parent MOVED to approve the application with conditions. Ms. Riahi seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2015-00008, to modify conditions of ZBA FY2014-00015 to allow changes to the approved building and site plans, under Section 10.33 of the Zoning Bylaw, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District), subject to conditions.

Mark Parent (JB)
MARK PARENT

Yuri Friman (JB)
YURI FRIMAN

Pari Riahi (JB)
PARI RIAHI

FILED THIS 28th day of January 2015 at 2:26 pm,
in the office of the Amherst Town Clerk Vandria J. Burger.
TWENTY-DAY APPEAL period expires, February 17, 2015.
NOTICE OF DECISION mailed this 29th day of January, 2015
to the attached list of addresses by Jeffrey R. Bagg, for the Board.
CERTIFICATE OF NO APPEAL issued this _____ day of _____, 2015.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2015,
in the Hampshire County Registry of Deeds.

BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED

Petition of Michael Ben-Chaim

For A Special Permit to modify Special Permit ZBA FY2014-00015 and/or ZBA FY2012-00021 to allow changes to the approved building and site plan including demolition of an existing structure and changes to the approved siding materials.

On the premises of 28 Shays Street
At or on Map 20A, Parcel 15, R-N

NOTICE of hearing as follows mailed (date) August 27, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated: August 13, 2014 and August 20, 2014

Hearing date and place August 28, 2014, September 11, 2014 & November 6, 2014
(Town Hall)

LEGAL NOTICE The Amherst Zoning Board of Appeals will meet on Thursday, August 28, 2014, at 6:30 PM, in the Town Room, Town Hall, to conduct the following business: PUBLIC HEARING: ZBA FY2015-00002 - Joel Greenbaum - For a Special Permit to extend and alter a pre-existing non-conforming use and/or structure by adding three additional dwelling units to an existing 20 unit building, under Section 9.22 of the Zoning Bylaw, at 85 North Whitney Street (Map 11D, Parcel 183, R-G Zoning District) ZBA FY2015-00004 - Sandra Knightly - For a Special Permit to formalize an existing third unit in an existing dwelling, as an extension and alteration of a pre-existing non-conforming use, under Section 9.22 of the Zoning Bylaw, at 33-37 Cottage Street (Map 11D-44, R-G Zoning District) ZBA FY2015-00008 - Michael Ben-Chaim - For a Special Permit to modify conditions of ZBA FY2014-00015 and/or ZBA FY2012-00021 to allow changes to the approved building and site plan including the demolition of an existing shed and changes to the approved siding material, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District) ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS August 13, 2014 33037-00
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SITTING BOARD and VOTE TAKEN:

To modify conditions of ZBA FY2014-00015 to allow changes to the approved building and site plans, under Section 10.33 of the Zoning Bylaw, subject to conditions

Mark Parent – Yes Yuri Friman – Yes Pari Riahi – Yes

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Michael Ben-Chaim

Address 28 Shays Street

City or Town Amherst, MA 01002

Identify Land Affected: 28 Shays Street
(Map 20A, Parcel 15, R-N Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

28 Shays Street Amherst

Street

City or Town

The record of title standing in the name of

Michael Ben-Chaim

Name of Owner

Whose address is 28 Shays Street Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the

Hampshire County Registry of Deeds: Book 10642 Page 326

or

Hampshire Registry District of the Land Court, Certificate No. _____

Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2015-00008

In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Mark Parent
(Board of Appeals)

da Chairman

Juri Edman
(Board of Appeals)

Clerk

_____ at _____ o'clock and _____ minutes _____ m.

Received and entered with the Register of Deeds in the County of Hampshire

Book _____ Page _____

ATTEST _____

Register of Deeds

Notice to be recorded by Land Owner

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/St/Zip</i>
17C-27	SHAYS ST	HOFFMAN, JEAN		74 OLD STAGE RD	WEST HATFIELD, MA 01088-9513
20A-14	2 SHAYS ST	TZENG, YOU PAN & HAN, SUSAN	C/O VALLEY PROPERTY MANAGEMENT	P.O. BOX 3649	AMHERST, MA 01004-3649
20A-32	5 SHAYS ST	KEOCHAKIAN, GREGORY & SYLVIA		5 SHAYS ST	AMHERST, MA 01002
20A-15	28 SHAYS ST	BEN-CHAIM, MICHAEL		28 SHAYS ST	Amherst, MA 01002
20A-31	31 SHAYS ST	DE LA CRETAZ, AVRIL		PO BOX 3045	AMHERST, MA 01004-3045
20A-17	38 SHAYS ST	HOFFMAN, JEAN		74 OLD STAGE RD	WEST HATFIELD, MA 01088-9513
20A-30	41 SHAYS ST	CRAY, WILLIAM J & SABINE H		41 SHAYS ST	AMHERST, MA 01002
20A-164	49 SHAYS ST	ACKERMAN, TEDD H		49 SHAYS ST	AMHERST, MA 01002
20A-18	52 SHAYS ST	HANNIGAN, SAMUEL T & TAMMY M		52 SHAYS ST	AMHERST, MA 01002
20A-42	59 SHAYS ST	ACKERMAN, JENNIFER		375 SHAYS ST	AMHERST, MA 01002
17C-60	130 WEST ST	SHEN, TONG & YIN, XIAOLING		130 WEST ST	AMHERST, MA 01002
17C-24	136 WEST ST	FURCOLO, TINA L & HIGHAM, DAVID G		136 WEST ST	AMHERST, MA 01002
17C-25	144 WEST ST	CZAP, MARGOT		144 WEST ST	AMHERST, MA 01002
17C-26	152 WEST ST	CAMPBELL, ANDREW C & FLYNN, SIMONE I		152 WEST ST	AMHERST, MA 01002

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
20A-3	165 WEST ST	GOLDSTEIN, WARREN J	SCHAPER, DONNA E	235 EAST 18TH ST	NEW YORK, NY 10003
20A-33	188 WEST ST	FENNER, HEINRICH & EVA MARIA		188 WEST ST	AMHERST, MA 01002
20A-34	196 WEST ST	GRYBKO, CHARLES V		196 WEST ST	AMHERST, MA 01002